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**CLERK, U.S. DISTRICT COURT
DISTRICT OF MONTANA
BILLINGS, MONTANA**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

ROBERT MONTCLAIR,)	
)	Case No.
Plaintiff,)	
)	COMPLAINT
vs.)	
)	
WESTMORELAND RESOURCES, INC.)	
)	
Defendant.)	
_____)	

TYPE OF ACTION

1. This is an action brought pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12111 et seq.

PARTIES

2. I am an individual person residing in Big Horn County Montana.

3. Westmoreland Resources, Inc. is a Delaware corporation doing business in Big Horn County Montana. Its principal office is P.O. Box 449, Hardin, Montana 59034.

JURISDICTION AND VENUE

4. This court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343. Venue is proper in the Billings Division of the District of Montana since the parties are located in Big Horn County, Montana.

ADMINISTRATIVE REMEDIES

5. I filed a complaint with the Equal Employment Opportunity Commission. I have completed that administrative remedy and received a “right to sue” letter. That letter was sent on November 2, 2011. This action is filed within 90 days of that letter and is timely.

CAUSE OF ACTION

6. I was employed by Westmoreland Resources at its Sarpy Creek mine. I worked the dragline at the mine.

7. I suffered from back problems and had to have back surgery in early 2009 and was unable to work. I was promised that I would have my job back when I recovered from the surgery.

8. I was released to return to work without restriction on September 30, 2009.

9. I contacted my employer and asked to return to work.

10. I was told there were no positions available on the dragline and that my supervisor did not feel comfortable with me working the dragline due to my back surgery.

11. I was told that I could work as a coal hauler. I was informed that I would be called when there was a coal hauler position available.

12. I called on occasion and was told I would be informed when a position became available.

13. In February 2011, Westmoreland sent me notice that my employment was terminated because I had never reported to work. Westmoreland had never sent me notice to report to work.

14. The termination is a pretext for not hiring me because of my disability.

15. As a result of the Defendant's actions, I have an ongoing loss of income since October 1, 2011. This is approximately \$4000.00 per month.

Therefore, I request judgment against Westmoreland Resources as follows:

1. Westmoreland be directed to offer me the first open position as dragline operator or coal hauler;
2. Money damages of \$4000 per month from October 2011 until I am working.
3. My costs in this case and my attorney fees if I have to hire a lawyer to fight this case all the way through; and
4. Anything else that justice requires.

Dated this 28 day of February, 2012.


ROBERT MONTCLAIR